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In The

Supreme Court of the United States

October Term 1969

No. 1238

ELAM REAMUEL TEMPLE

Petitioner

Vs.

THE NORTH CAROLINA STATE BAR

Respondent

PETITION FOR A REHEARING FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA AND THE NORTH CAROLINA COURT OF APPEALS

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To: The Honorable WARREN EARL BURGER, Chief Justice and to the Honorable Associate Justices of the Supreme Court of the United States of America:

Petitioner, Elam Reamuel Temple, respectfully petitions for a rehearing on his petition for a Writ of Certiorari to the Supreme Court of North Carolina and the North Carolina Court of Appeals to review their judgments entered August 14, 1968, November 13, 1968, January 21, 1969, October 22, 1969 and December 2, 1969. That the judgments appealed from being Superior Court judgment of Johnston County North Carolina 69-CvS-312 May 5, 1969 and October 16, 1967.

That the United States Supreme Court denied petitioner's petition for a Writ of Certiorari April 6, 1970.

OPINION BELOW

The opinion of the North Carolina Supreme Court is reported

in 275 N.C. 682 and the opinion of the Court of Appeals of North Carolina is reported in 6 N.C. App. 437.

JURISDICTION

Judgment of the North Carolina Supreme Court was entered on December 2, 1969. The jurisdiction of this Court is invoked under 28 U.S. Code, Section 1257 (3) and Rule fifty (58) eight of the United States Supreme Court.

QUESTIONS PRESENTED

(1) Was the petitioner deprived of his constitutional rights by the delay in the bringing of the action by respondent?

(2) Did the trial Court err by preventing petitioner from presenting his evidence at the trial of the cause in October 1967?

(3) Was the petitioner deprived of his constitutional rights by the denial of his motion for a new trial on the grounds of newly discovered evidence?

(4) Is the return on the subpoena of L. T. Huff, United States Secret Service Agent, "that he had been dead about a year", false and untrue and as such constitutes a fraud?

SUMMARY STATEMENT

A summary statement of the cause has previously been presented in petitioner's petition for a Writ of Certiorari.

RAISING OF THE FEDERAL QUESTIONS

Raising of the federal questions have previously been presented in petitioner's petition for a Writ of Certiorari.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

Some of the reasons relied on for the allowance of the Writ of Certiorari have previously been presented in petitioner's petition.

REASONS RELIED ON FOR A REHEARING AND ALLOWANCE OF THE WRIT

QUESTION NUMBER ONE

Respondent presents in his brief and answer to the petition that the delay in the bringing of the action was due to the actions of the petitioner. The record does not sustain this allegation. The alleged first cause of action against petitioner is alleged to have happened July 18, 1963, summons in the bar proceeding was not issued until September 8, 1966. The Federal contempt proceedings were commenced September 1964. After the contempt proceedings had been litigated for some two years with unusual news coverage the present case was commenced against petitioner. Respondent waited for over two years after the commencement of the Federal contempt proceeding during which time the press built up considerable public sentiment about the matter and the respondent used the series of Federal convictions as a springboard for a conviction in the bar case. During the time when the facts were being aired in Federal Court as to the first alleged cause of action petitioner had no reason to believe action was being anticipated by respondent. Petitioner argues that there was an unreasonable delay in the bringing of the action and that his demurrer in the trial Court should have been sustained.

QUESTION NUMBER TWO

Did the trial Court err by preventing petitioner from presenting his evidence at the trial of the cause in October 1967?

Agents Mr. Spicer & Mr. Tarlton were not permitted to testify. It is admitted that no permission was obtained from the Secretary of the Treasury of the United States and that same was not necessary under the facts and circumstances of the present case.

That the U.S. Attorney who appeared on behalf of witnesses Spicer & Tarlton was in error in citing Title 31 Section 1.3 as authority to quash the subpoenaes. Section 1.3 deals with ex-

plaining the meaning of various terms used in Title 31 U.S. Code of Federal Regulations. At the trial of the cause the U.S. Attorney cited as his authority to quash the subpoenaes for Spicer & Tarlton the letter of the U.S. Attorney General as heretofore setforth in petitioner's petition. Title 31 Section 1.10 appears to be the section of the Federal Code of Regulations which applies in the present case and petitioner challenges the validity thereof as authority to quash the subpoenaes.

Title 31 Section 1.10 provides: "Testimony or the production of records in a Court or other proceedings: (a) Treasury Department officers and employees are prohibited from testifying or otherwise furnishing information obtained as a result of their official capacity or in connection with the transaction of public business or in compliance with a subpoena or other order or demand of any Court or other authority without the prior approval of an officer authorized to determine the availability of record under these regulations. (b) Treasury Department officers and employees are prohibited from furnishing any record in compliance with subpoenaes duces tecum or other order or demand of any Court or other authority without the prior approval of an officer authorized to determine the availability of records under the regulation in part: (c) In Court cases in which the U.S. or the Treasury Department is not a party, where the giving of testimony is desired, an affidavit by the litigant or his attorney setting forth the information with respect to which the testimony of such officer or employee is desired, must be submitted before permission to testify will be granted. Permission to testify will in all cases be limited to the information setforth in the affidavit or to such portion thereof as may be deemed proper. (d) where approval to testify or to furnish records in compliance with a subpoena, order or demand is not given the person to whom it is directed shall, if possible, appear in Court or before the other authority and respectfully state his inability to comply in full with the subpoena, order or demand, relying for his actions upon this section."

In the present case it was never shown to the trial Court that the Secretary of the Treasury or any officer thereof objected to the agents testifying. The Assistant U.S. Attorney was the one who appeared and objected. It was never shown to the trial Court that the information sought to be obtained from the witnesses was in any way connected with their official duties as agents of the Treasury Department. The trial Court made no findings of facts that they were even treasury agents, that their testimony was privileged or that the testimony sought was gained in their official capacity as agents of the Government. Although the U.S. Government was not a direct party to this cause, certainly it may be said that indirectly the Government was a party to the actions. The status of an attorney appears to apply equally in Federal and State Courts. His status in either the Federal Court or State Courts absolutely affects his status in the other. For this reason it was not necessary that the U.S. Government be a party to the action in order for the testimony to be proper without the procuring of permission.

In Boske Vs. Comingore the Court stated; 177 U.S. 459 "We are faced here only with the legal question of the scope of the delegated power of the Attorney General. There is no procedure for questioning the scope of the delegated power of the Attorney General. Plaintiff's only adequate or effective relief can be granted in this Court. (see Leedom vs Kyne, 357 U.S. 184.) Under these circumstances the Court has jurisdiction both under the Administrative Act 5 U.S.C. 701-706 and in the exercise of its discretionary powers under the Declaratory Judgment Act 28 U.S.C. 2201."

In the case of COONEY VS. DRYDOCK CO., 288 F S 708 July 26, 1968 D. J. HIGGINBOTHAM stated: "A claim of executive privilege is validly made only by the head of the executive department or administrative agency involved, after actual personal consideration by the officer." (United States vs. Reynolds 345 U.S. 1)

In the present case the basis and foundation of the bar case as

to the first alleged cause of action was founded in Federal Court. The two cases, that is the Federal contempt case and the Bar case were so related that no permission was necessary when in fact no showing of permission was presented in the contempt case.

That the denial of the testimony of witnesses Spicer and Tarlton violated the spirit and meaning of the due process clauses of the U.S. Constitution (Amendment XIV Sec 1) (Amendments V & VI of the U.S .Constitution.) Petitioner challenges the validity of Title 31 Sec 1.10 of the Code of Federal Regulations, as applied to the facts and circumstances in the present case.

QUESTION NUMBER THREE

Petitioner is entitled to a new trial on the grounds of newly discovered evidence for the reasons presented in his petition for a Writ of Certiorari.

QUESTION NUMBER FOUR

Does the return on the subpoena of L. T. Huff "that he had been dead about a year" constitute an untrue and false return? In petitioner's petition he alleges that such constitutes a fraud. The respondent has failed to setforth any answer to this contention and therefore admits same to be true. Since this witness first appeared in the Federal Court in the contempt case against petitioner the identity and location of this witness will not be revealed by the Government. There has been no showing by the respondent as to when he died, where he died and the place of his burial. At the time when this witness first appeared and testified against petitioner in the contempt proceedings petitioner was not aware that he was an imposter. It is only through the medium of requiring his appearance and testifying in the Bar case that petitioner can show that he was an imposter and that the Federal proceedings were founded on a fraud, and that the subsequent convictions and imprisonment of petitioner in Federal Court was not well founded. It

is urgently argued that the Counsel for the N.C. State Bar is not only under a legal but a moral duty and obligation to reveal the identity and present Mr. Huff at the trial of this case.

Petitioner argues that sufficient reasons are setforth in his petition for a Writ of Certiorari and his petition for a rehearing for the allowance of the Writ of Certiorari. That the State Courts of North Carolina have so far departed from the basic and usual course of judicial proceedings as to call for the exercise of this Court's power of SUPERVISION AND DIRECTION to the end that a fair trial may be had and all of the evidence presented.

WHEREFORE: Petitioner prays that a rehearing be granted in this cause and that a Writ of Certiorari be issued to the Supreme Court of North Carolina and the North Carolina Court of Appeals and that the opinions and judgments of Johnston County Superior Court, the North Carolina Court of Appeals and the North Carolina Supreme Court be reviewed and reversed.

RESPECTFULLY SUBMITTED

Dated at Raleigh, North Carolina
April 17, 1970.

JOHN W. HINSDALE
Attorney at Law for Petitioner
808 Lawyers Building
Raleigh, North Carolina

APPENDIX

CERTIFICATE OF COUNSEL

I, John W. Hinsdale, attorney at law, Raleigh, North Carolina do hereby certify that this petition for a rehearing is presented in good faith and not for the purpose of delay. That the petition for rehearing is restricted to intervening circumstances of substantial and controlling effect (Sanitary Refrigerator Co. Vs. Winters 280 U.S. 30,34 footnote 1). That there is also set-forth in said petition substantial grounds for the allowance of the writ which have not previously been presented. (Schriber Vs. Cleveland Trust Co. 305 U.S. 47,50)

That I am familiar with the facts and circumstances surrounding this case having represented petitioner since the inception of the matter October 1964 in Eastern District Federal Court for North Carolina. That there is considerable merit to his contention that his constitutional rights have been violated due to the lack of the required appearance and testimony of his witnesses.

This the 17th day of April 1970.

John W. Hinsdale atty at law for
Petitioner, Raleigh, N. C.